

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4 JUSTIN VINCENT PARANA, )

5                                   Plaintiff )

6                                   v. )

7 NCO FINANCIAL SYSTEMS, INC., )

8                                   Defendant )

Case No.:

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**(Unlawful Debt Collection Practices)**

9  
10                                   **COMPLAINT**

11           JUSTIN VINCENT PARANA (“Plaintiff”), by his attorneys, KIMMEL &  
12 SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC.  
13 (“Defendant”):  
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15                                   **INTRODUCTION**

16           1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15  
17 U.S.C. § 1692 *et seq.* (“FDCPA”).  
18

19                                   **JURISDICTION AND VENUE**

20           2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states  
21 that such actions may be brought and heard before “any appropriate United States district court  
22 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original  
23 jurisdiction of all civil actions arising under the laws of the United States.  
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3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

## PARTIES

6. Plaintiff is a natural person residing in Johnsonburg, Pennsylvania.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and

1 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
2 unconscionable conduct, both generally and in a specific list of disapproved practices.

3       12. In particular, the FDCPA broadly enumerates several practices considered  
4 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
5 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
6 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
7 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
8 collector may not use any false, deceptive, or misleading representation or means in connection  
9 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
10 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
11 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
12 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
13 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
14 connection with the collection of a debt.  
15

16       13. In enacting the FDCPA, the United States Congress found that “[t]here is  
17 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
18 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
19 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
20 additionally found existing laws and procedures for redressing debt collection injuries to be  
21 inadequate to protect consumers. 15 U.S.C. § 1692b.  
22

23       14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
24 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
25 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote consistent State action  
2 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

3  
4 **FACTUAL ALLEGATIONS**

5 15. At all relevant times, Defendant was attempting to collect an alleged consumer  
6 debt from Plaintiff for a Walmart credit card.

7 16. The alleged debt at issue arose out of transactions, which were primarily for  
8 personal, family, or household purposes.

9 17. Beginning in or around January 2011 and continuing until June 5, 2011,  
10 Defendant, its agents, employees, and servants, engaged in debt collection activities seeking  
11 payment from Plaintiff.

12 18. Defendant, its employees and servants harassed Plaintiff by making continuous  
13 calls to his home telephone number.

14 19. Plaintiff received telephone calls from Defendant on a number of occasions from  
15 the following phone number (603) 589-7558; the undersigned has confirmed that the number  
16 belongs to Defendant.

17 20. Defendant placed repeated calls to Plaintiff's home telephone almost every day,  
18 causing Plaintiff to receive, at times, more than four (4) collection calls a day.

19 21. Defendant's representatives have suggested that Plaintiff work out a payment  
20 plan to repay the alleged debt.

21 22. Plaintiff informed Defendant and its representatives on several occasions that he  
22 is currently on welfare and has no other source of income.

23 23. Defendant and its representatives have become more aggressive in their attempts  
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1 to get Plaintiff to agree to a repayment plan by suggesting Plaintiff pay off the alleged debt with  
2 post-dated checks.

3 24. Defendant's representatives told Plaintiff that the alleged debt would be reported  
4 on his credit report.

5 25. Within five (5) days after the initial communication with Plaintiff back in January  
6 2011, Defendant did not send written communication notifying Plaintiff of his rights and  
7 privileges under the law, specifically the right to dispute and/or request verification of the  
8 alleged debt.

9 26. Defendant's actions in attempting to collect the alleged debt were harassing,  
10 abusive and highly deceptive.  
11

### 12 CONSTRUCTION OF APPLICABLE LAW

13 27. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
14 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer  
15 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.  
16 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
17 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
18 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

19 28. The FDCPA is a remedial statute, and therefore must be construed liberally in  
20 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
21 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
22 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the  
23 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
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1 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
2 2002).

3 29. The FDCPA is to be interpreted in accordance with the “least sophisticated”  
4 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
5 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
6 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for  
7 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
8 and the fact that a false statement may be obviously false to those who are trained and  
9 experienced does not change its character, nor take away its power to deceive others less  
10 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it  
11 ensures protection of all consumers, even naive and trusting, against deceptive collection  
12 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
13 collection notices. Clomon, 988 F. 2d at 1318.  
14  
15

16 **COUNT I**  
17 **DEFENDANT VIOLATED**  
18 **THE FAIR DEBT COLLECTION PRACTICES ACT**

19 30. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
20 more of the following ways:

- 21 a. Defendant violated the FDCPA generally;
- 22 b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in  
23 connection with the collection of an alleged debt;
- 24 c. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's  
25 telephone to ring repeatedly or continuously with the intent to harass, annoy

- 1 or abuse Plaintiff;
- 2 d. Defendant violated § 1692e of the FDCPA by using false, deceptive, or
- 3 misleading representations or means in connection with the collection of a
- 4 debt;
- 5 e. Defendant violated § 1692e(10) of the FDCPA by using false representations
- 6 or deceptive means to collect or attempt to collect a debt;
- 7 f. Defendant violated § 1692f of the FDCPA by using unfair and
- 8 unconscionable means with Plaintiff to collect or attempt to collect a debt;
- 9 g. Defendant violated § 1692g of the FDCPA by failing to send written
- 10 notification, within five (5) days after its initial communication with Plaintiff,
- 11 advising Plaintiff of her rights to dispute the debt or request verification of the
- 12 debt;
- 13 h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
- 14 and failed to comply with the FDCPA.
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17 WHEREFORE, Plaintiff, JUSTIN VINCENT PARANA, respectfully prays for a judgment

18 as follows:

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- 20 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
- 21 1692k(a)(1);
- 22 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
- 23 15 U.S.C. § 1692k(a)(2)(A);
- 24 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
- 25 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, JUSTIN VINCENT PARANA, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 06/13/11

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